

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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Ho'ona'auao Community Television, Inc.	)	File Number EB-02-HL-074
Licensee of Station KWBN-TV	)	NAL/Acct. No. 200232860003
Honolulu, Hawaii	)	FRN 0004-0750-57

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** September 27, 2002

By the Enforcement Bureau, Honolulu Resident Agent Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Ho'ona'auao Community Television, Inc., ("Ho'ona'auao"), licensee of television broadcast station KWBN in Honolulu, Hawaii, has apparently willfully and repeatedly violated Section 11.61(a)(1)(v) of the FCC Rules and Regulations ("Rules"),<sup>1</sup> by failing to retransmit the Emergency Alert System ("EAS") required monthly test ("RMT"). We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Ho'ona'auao is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. On July 1, 2002, Agent Raymond of the FCC Honolulu Resident Agent Office monitored television broadcast station KWBN, channel 44, from 11:15 a.m. HST until 1:15 p.m. HST. During this period, KWBN did not retransmit the EAS RMT initiated by Hawaii State Civil Defense at approximately 11:15 a.m. HST.

3. On August 1, 2002, Agent Raymond of the FCC Honolulu Resident Agent Office monitored television broadcast station KWBN, channel 44, from 11:10 a.m. HST until 12:37 p.m. HST. During this period, KWBN did not retransmit the EAS RMT initiated by Hawaii State Civil Defense at approximately 11:15 a.m. HST.

4. On August 2, 2002, Agents Raymond and Hagihara of the FCC Honolulu Resident Agent

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<sup>1</sup> 47 C.F.R. 11.61(a)(1)(v).

<sup>2</sup> 47 U.S.C. § 503(b).

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Office inspected the EAS equipment installed at the KWBH studio at 875 Waimanu Street, #632, Honolulu, Hawaii 96813. The EAS receipts generated by the EAS Encoder/Decoder show that the EAS RMT's were not retransmitted on either July 1, 2002 or August 1, 2002. No log entries existed in any station log explaining why no RMT's were retransmitted in July or August, 2002.

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5. On September 3, 2002, Agent Hagihara of the FCC Honolulu Resident Agent Office monitored television broadcast station KWBN, channel 44, from 11:10 a.m. HST until 12:30 p.m. HST. During this period, KWBN did not retransmit the EAS RMT initiated by Hawaii State Civil Defense at approximately 11:15 a.m. HST.

### III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>3</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>4</sup>

7. The Rules provide that every TV broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.<sup>5</sup> The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.<sup>6</sup> State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>7</sup>

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>5</sup> 47 C.F.R. §§ 11.11 and 11.41.

<sup>6</sup> 47 C.F.R. §§ 11.1 and 11.21.

<sup>7</sup> 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

8. The Rules require all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed so that the monitoring and transmitting functions are available during the times the station is in operation.<sup>8</sup> Section 11.61(a)(1)(v) of the Rules specifically requires that monthly tests be retransmitted within 60 minutes of receipt by broadcast stations in an EAS Local Area or State.<sup>9</sup> Based on the evidence before us, we find that on July 1, 2002, August 1, 2002, and September 1, 2002, Ho'ona'auao willfully and repeatedly violated Section 11.61(a)(1)(v) of the Rules by failing to retransmit the EAS RMT.

9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"),<sup>10</sup> the base forfeiture amount for failure to have EAS equipment installed or operational is \$8,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the Commission's rule requiring timely retransmission of the monthly EAS tests. Therefore we must determine what an appropriate amount should be for this violation.<sup>11</sup> The Commission requires periodic tests of EAS equipment to ensure the operational integrity of the EAS system in the event of an actual emergency. The requirement that stations retransmit the monthly EAS tests is similar in both nature and severity to other required operational readiness checks. As failure to make measurements or conduct required monitoring carries a base forfeiture amount of \$2,000, pursuant to the *Forfeiture Policy Statement*, the base forfeiture amount for failure to retransmit EAS tests is set at \$2,000.

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<sup>8</sup> 47 C.F.R. § 11.35.

<sup>9</sup> 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform with the procedures in the EAS Operational Handbook. See also, *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed. Reg. 18502 (April 16, 2002).

<sup>10</sup> 12 FCC Rcd 17087 (1997), recon. denied 15 FCC Rcd 303 (1999).

<sup>11</sup> The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "any omission of a specific rule violation from the... [*Forfeiture Policy Statement*]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17,099. See e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

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10. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>12</sup> Ho'ona'auao has a history of prior offenses, having been issued two Notices of Violation for EAS related matters in 2001<sup>13</sup>. In addition, Ho'ona'auao has failed to retransmit the monthly EAS tests for three months in a row. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a forfeiture amount of \$4,000 is warranted.<sup>14</sup>

#### **IV. ORDERING CLAUSES**

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Ho'ona'auao Community Television, Inc., is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for violating Section 11.61(a)(1)(v) of the Rules.<sup>15</sup>

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Ho'ona'auao Community Television, Inc SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number 0004-0750-57 and NAL/Acct. No. 200232860003.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, DC 20554, and must include NAL/Acct. No. 200232860003.

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<sup>12</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>13</sup> Notices of Violation were issued to Ho'ona'auao on February 6, 2001 for failure to retransmit the EAS RMT in violation of 47 C.F.R. § 11.61(a)(1)(v), and again on March 6, 2001 for failure to transmit a visual message of the EAS RMT in violation of 47 C.F.R. § 11.51(d).

<sup>14</sup> 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999).

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.61(a)(1)(v).

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15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Ho’ona’auao Community Television, Inc, 875 Waimanu Street, Suite 632, Honolulu, Hawaii 96813.

FEDERAL COMMUNICATIONS COMMISSION

John R. Raymond  
Honolulu Resident Agent

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<sup>16</sup> See 47 C.F.R. § 1.1914